



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
September 7, 2006

REGISTERED MAIL
RB 670 437 871 US

Meadowdale Marina, LLC
Attn: Vladan Milosavljevic, General Manager
23423 Brier Road
Brier, WA 98036

**RE: Water Quality Certification Order #3388 and Coastal Zone Management
Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference
#200500779 to Repair and Upgrade an Existing Pier, Edmonds, Snohomish
County, Washington**

Dear Mr. Milosavljevic:

The U.S. Army Corps of Engineers issued a public notice for an individual Section 404 and Section 10 Permit on October 20, 2005, for the proposed Meadowdale Marina Pier Repair/Upgrade project. On December 7, 2005, Meadowdale Marina, LLC, submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed project. The project proposes to replace approximately 277 timber piles with 230 steel piles, replace approximately 27,000 lineal feet of creosote-treated pile caps with concrete caps, replace approximately 10 creosote-treated fender piles with 10 ACZA timber fender piles, replace 45,000 square feet of timber decking with concrete decking, construct a 4-foot wide grated walkway along the approach trestle, and incorporate a stormwater runoff collection and treatment system into the replacement pier system.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the October 20, 2005, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On October 25, 2005, Meadowdale Marina, LLC, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On April 21, 2006, Ecology and Meadowdale Marina, LLC, jointly requested a CZM extension from the Corps. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Meadowdale Marina, LLC's determination that the proposed work is consistent with



Washington's CZMP. This concurrence is based upon Meadowdale Marina, LLC's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

This letter also serves as the State response to the Corps of Engineers' October 20, 2006, Public Notice.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
Laura Arber, Washington Department of Fish and Wildlife
Chad Unland, Washington Department of Natural Resources

e-cc: Penny Keys – HQ
Loree' Randall – HQ

IN THE MATTER OF GRANTING A)	ORDER #3388
WATER QUALITY)	Corps Reference No. 200500779
CERTIFICATION TO)	Meadowdale Marina pier upgrade/repair, Puget
Meadowdale Marina, LLC)	Sound, located in Snohomish County,
in accordance with 33 U.S.C. 1341)	Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Meadowdale Marina, LLC
 Attn: Vladan Milosavljevic
 23423 Brier Road
 Brier, WA 98036

On December 7, 2005, Meadowdale Marina, LLC, submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice was distributed by the U.S Army Corps of Engineers (Corps) for the above-referenced project on October 20, 2005.

The proposed project entails: replacing approximately 277 timber piles with 230 steel piles, replacing approximately 27,000 lineal feet of creosote-treated pile caps with concrete caps, replacing approximately 10 creosote-treated fender piles with 10 ACZA timber fender piles, replace 45,000 square feet of timber decking with concrete decking, constructing a 4-foot wide grated walkway along the approach trestle, and incorporating a stormwater runoff collection and treatment system into the replacement pier system. The project is located at 16111 76th Place West, Edmonds, Snohomish County, Washington, Section 5, Township 27 North, Range 4 East, WRIA #8.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Meadowdale Marina, LLC, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3388 and Corps Reference #200500779.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 7, 2005. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the Corps does not issue Section 404 and Section 10 permits.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.

- A7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. In-Water Construction Water Quality Conditions:

- B1. Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3).
- B2. In-Water Construction Water Quality Sampling and Monitoring: Prior to the commencement of any construction, the Applicant shall submit to Ecology for its review and written approval a Water Quality Monitoring Plan. "In-water construction" is defined as all work below the ordinary high water mark (OHWM) of Puget Sound and

Possession Sound. Ecology may require changes and modifications to the Plan. The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-110(3), which allows a 150 foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments in Puget Sound and Possession Sound. Background samples shall be collected outside the area of influence of the inwater work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Samples shall be collected a minimum of every two (2) hours throughout the first day of in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of three (3) times per day during in-water activity if no exceedances are detected. Additional sampling may be required if turbidity exceedances are observed or measured to be above the temporary mixing zone criteria of WAC 173-201A-110(3).
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in Class AA waters are as follows: turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-110(3) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- f. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Monitoring Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- g. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #3388, Attn: 401/CZM Federal

Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, photographs, and any other pertinent information.

B3. Project activities shall be conducted to minimize siltation of the beach area and bed.

C. Project Mitigation Conditions for Waters of the State:

- C1. The Applicant shall avoid eelgrass beds during construction. Placement of derrick anchors (or spuds) in areas designated as eelgrass beds is prohibited. Eelgrass beds shall not be shaded for more than three (3) consecutive days during peak growing times (i.e., May through August).
- C2. Prior to initiating construction activities, a qualified consultant shall mark the edge of the eelgrass habitat with temporary buoys within the barge work corridors.
- C3. The Applicant shall minimize the number of barge trips into the shoreline area in order to prevent propeller scour and impacts to eelgrass, kelp, and benthic habitat.
- C4. In areas with kelp, eelgrass, or macroalgae populations, vessel operation shall be restricted to tidal elevations adequate to prevent grounding of the barge.
- C5. If kelp, eelgrass, or macroalgae beds are present, vessel operation shall be restricted to tidal elevations adequate to prevent propeller-related damage to vegetation.

- C6. Minimal propulsion power shall be used when maneuvering barges between Mean Lower Low Water (MLLW) and the -16.0 tidal elevation (MLLW=0.0) for the protection of eelgrass habitat.
- C7. The Applicant shall submit two (2) copies of the following reports to Ecology within one (1) month following the date data was last collected during that reporting period:
- a. Pre-construction baseline eelgrass surveys;
 - b. Post-construction eelgrass surveys, conducted at the same time of year as the pre-construction baseline eelgrass survey;

The eelgrass/macroalgae habitat surveys shall be conducted per standard Washington Department of Fish and Wildlife (WDFW) guidelines unless alterations prepared by a qualified biologist are reviewed and approved by Ecology.

- C8. If eelgrass beds are found to be damaged after construction, an Eelgrass Planting and Monitoring Plan shall be developed and implemented, subject to review and approval by Ecology. Two (2) copies of the Plan shall be submitted to Ecology within 90 days of completion of the post-construction eelgrass surveys. The Eelgrass Planting and Monitoring Plan will stipulate at least ten (10) years of monitoring of planted eelgrass.

D. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- D1. Construction stormwater, sediment, and erosion control BMPs (*e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Work shall be accomplished per the Joint Aquatic Resource Application, dated December 7, 2005; *Biological Evaluation, Proposed Repairs, Meadowdale Pier, Edmonds, Washington*, dated June 17, 2005, prepared by BioAquatics International LLC; and *Addendum to Biological Evaluation*, dated November 11, 2005, prepared by BioAquatics International LLC, except as modified by this Order.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D6. Clean Fill Criteria: Applicant shall ensure that fill (clean sand) placed for the proposed project does not contain toxic materials in toxic amounts.

Work in Marine Waters:

- D7. During construction, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- D8. Petroleum spill containment materials shall be deployed in the water surrounding active work barges at all times.
- D9. Only barges with low walls or other containment device around the perimeter of the barge shall be used for storage of dewatering discharges and excavated sediments in order to prevent and minimize sediments and turbid waters from entering marine water.
- D10. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- D11. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent sawdust and other materials from entering the water.
- D12. All manmade debris that has been deposited on the beach within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Abandoned concrete pipes, miscellaneous concrete slabs, and angular rocks in the construction work corridor that have washed into intertidal areas shall be removed from the beach.
- D13. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

Piling Removal Conditions:

- D14. All piling shall be removed by vibratory extraction. In the event pilings break off during extraction, the remaining piling may be removed by using a clamshell bucket or a chain.
- D15. Work surface on the barge deck shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- D16. All existing creosote-treated pilings shall be completely extracted, removed from marine waters, and disposed of at an approved upland disposal site. If the pilings are unable to be completely removed they shall be cut off at a minimum of two (2) feet below grade.
- D17. Piles removed from substrate: the pile shall be moved immediately from the water into the barge lined with filter fabric or straw bales around the perimeter. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.

Pile Driving:

- D18. All new pilings shall be steel or concrete.
- D19. The Applicant shall employ a bubble curtain around piles when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. A block of wood at least six (6) inches thick shall be placed between the pile driver and the pile to minimize in-water noise.

E. Sediment Sampling Conditions:

- E1. The Applicant shall develop a sediment Sampling and Analysis Plan (SAP) and submit the SAP to Ecology for its review and approval 21 days before construction is scheduled to begin. Sampling shall not begin until Ecology provides written approval of the SAP.
- E2. The SAP shall contain, at a minimum, the following condition: The Applicant shall collect sediment samples from the footprint of the area being impacted by removal and construction activities. The purpose of such sampling is to determine whether the sediment quality has been impacted by marina operations. If the surface sediment is found to be degraded, the Applicant shall take appropriate action, as approved by Ecology, to restore sediment quality to sediment management standards.

E3. Construction shall not begin until sediment sampling results have been reviewed and analyzed by Ecology. Ecology may require additional measures for project construction based on the results of this sediment sampling.

E4. Sampling Data Submittal – Sediments

- a. Sediment sampling data for all required fields listed in the current version of SEDQUAL (Sediment Quality Information System) shall be submitted to Ecology electronically in SEDQUAL data entry templates including, but not limited to REFERENCE, SURVEY, STATION, SAMPLE, CHEMISTRY, BIOASSAY and BIOASSAY CONTROL. The current version of SEDQUAL can be found at <http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>.
- b. Station locations shall include latitude/longitude coordinates in NAD83 HARN south zone feet and chemical concentration data shall be reported in dry weight units.
- c. Electronic SEDQUAL template data must be verified to be compatible with the current version of SEDQUAL which uses ASCII protocol, comma delimited text files prior to delivery to Ecology. Verification shall be conducted by the consultant importing each of the data templates into their SEDQUAL database, correcting any errors, and then exporting the corrected final templates for delivery to Ecology.
- d. Sediment sampling data shall also be submitted to Ecology in hardcopy reports containing data tables in both dry weight and total organic carbon normalized units in comparison to applicable state regulatory criteria. Electronic SEDQUAL template data shall be submitted to Ecology simultaneously with the hardcopy report.

F. Emergency/Contingency Measures

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project. This Plan shall be submitted to Ecology for review 30 days prior to beginning construction.
- F2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- F3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.

- F4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

H. Reporting and Notification Requirement Conditions

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500779, Order #3388, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

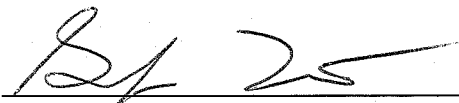
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated September 7, 2006 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**MEADOWDALE MARINA, LLC
PIER REPAIR/UPGRADE PROJECT
Water Quality Certification Order #3388**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #3388 Section 401 Water Quality Certification for the Meadowdale Marina, LLC, Pier Repair/Upgrade Project. I have also read and understand all permits, plans, documents, and approvals associated with the Meadowdale Marina, LLC, Pier Repair/Upgrade Project referenced in this Order.

Signature

Date

Title

Company